

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FREDRICK DON KILMER,

No. C 10-02141 SBA (PR)

Plaintiff,

**ORDER GRANTING IN FORMA
PAUPERIS STATUS; AND DENYING
MOTION FOR APPOINTMENT OF
COUNSEL**

v.

CITY AND COUNTY OF SAN FRANCISCO,
et al.,

Defendants.

Plaintiff, a state prisoner, has filed a prose civil rights action pursuant to 42 U.S.C. § 1983. Before the Court is Plaintiff's application for in forma pauperis and his motion to appoint counsel.

Plaintiff's application for in forma pauperis status is GRANTED. The total filing fee due is \$350.00. The initial partial filing fee due for Plaintiff at this time is \$0.00. A copy of this Order and the attached instruction sheet will be sent to Plaintiff, the Prison Trust Account Office and the Court's Financial Office.

Plaintiff has also filed a motion for appointment of counsel to represent him in this action. There is no constitutional right to counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. See Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 25 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in § 1983 action), withdrawn in part on other grounds on reh'g en banc, 154 F.3d 952 (9th Cir. 1998) (en banc). The court may ask counsel to represent an indigent litigant under 28 U.S.C. § 1915 only in "exceptional circumstances," the determination of which requires an evaluation of both (1) the

1 likelihood of success on the merits, and (2) the ability of the plaintiff to articulate his claims pro se
2 in light of the complexity of the legal issues involved. See id. at 1525; Terrell v. Brewer, 935 F.2d
3 1015, 1017 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of
4 these factors must be viewed together before reaching a decision on a request for counsel under
5 § 1915. See id.

6 The Court is unable to assess at this time whether exceptional circumstances exist which
7 would warrant seeking volunteer counsel to accept a pro bono appointment. The proceedings are at
8 an early stage and it is premature for the Court to determine Plaintiff's likelihood of success on the
9 merits. Moreover, Plaintiff has been able to articulate his claims adequately pro se in light of the
10 complexity of the issues involved. See Agyeman v. Corrs. Corp. of Am., 390 F.3d 1101, 1103 (9th
11 Cir. 2004). Accordingly, the request for appointment of counsel at this time is DENIED. This does
12 not mean, however, that the Court will not consider appointment of counsel at a later juncture in the
13 proceedings; that is, after Defendants have filed their dispositive motion such that the Court will be
14 in a better position to consider the procedural and substantive matters at issue. Therefore, Plaintiff
15 may file a renewed motion for the appointment of counsel after Defendants' dispositive motion has
16 been filed. If the Court decides that appointment of counsel is warranted at that time, it will seek
17 volunteer counsel to agree to represent Plaintiff pro bono.

18 This Order terminates Docket nos. 2 and 3.

19 The Court will review Plaintiff's complaint in a separate written Order.

20 IT IS SO ORDERED.

21 DATED: 7/1/10


SAUNDRA BROWN ARMSTRONG
United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

INSTRUCTIONS FOR PAYMENT OF PRISONER'S FILING FEE

The prisoner shown as the plaintiff or petitioner on the attached order has filed a civil action in forma pauperis in this court and owes to the court a filing fee. Pursuant to 28 U.S.C. § 1915, the fee is to be paid as follows:

The initial partial filing fee listed on the attached order should be deducted by the prison trust account office from the prisoner's trust account and forwarded to the clerk of the court as the first installment payment on the filing fee. This amount is twenty percent of the greater of (a) the average monthly deposits to the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition or (b) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition.

Thereafter, on a monthly basis, 20 percent of the preceding month's income credited to the prisoner's trust account should be deducted and forwarded to the court each time the amount in the account exceeds ten dollars (\$10.00). The prison trust account office should continue to do this until the filing fee has been paid in full.

If the prisoner does not have sufficient funds in his/her account to pay the initial partial filing fee, the prison trust account office should forward the available funds, and carry the balance forward each month until the amount is fully paid.

If the prisoner has filed more than one complaint, (s)he is required to pay a filing fee for each case. The trust account office should make the monthly calculations and payments for each case in which it receives an order granting in forma pauperis and these instructions.

The prisoner's name and case number must be noted on each remittance. The initial partial filing fee is due within thirty days of the date of the attached order. Checks should be made payable to Clerk, U.S. District Court and sent to Prisoner Accounts Receivable, U.S. District Court, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102.

cc: Plaintiff/Petitioner
Finance Office

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 FREDRICK DON KILMER,

5 Plaintiff,

6 v.

7 CITY AND COUNTY OF SAN FRANCISCO et
8 al,

9 Defendant.
10 _____/

Case Number: CV10-02141 SBA

CERTIFICATE OF SERVICE

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on July 2, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
16 located in the Clerk's office.

17 Fredrick Don Kilmer
18 G-53381
19 High Desert State Prison
20 P.O. Box 3030
21 Susanville, CA 96127

22 PRISON TRUST ACCOUNT OFFICE
23 G-53381
24 High Desert State Prison
25 P.O. Box 3030
26 Susanville, CA 96127

27 Dated: July 2, 2010

28 Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk